

MIKE KREID: CR  
STATE INSURANCE COMMISSION



OFFICE OF  
INSURANCE COMMISSIONER

*In The Matter Of*

WESTERN NATIONAL ASSURANCE  
COMPANY.

An Authorized Insurer,

Order No. D06-164

## CONSENT ORDER LEVYING A FINE

To: Western National Assurance Company  
5350 West 78<sup>th</sup> Street  
Edina, Minnesota 55439-3101

*Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following:*

### FINDINGS OF FACT:

1. Western National Assurance Company ("Western National") is an authorized insurer writing property, casualty, vehicle, surety and marine transportation insurance in Washington.
2. The Office of the Insurance Commissioner ("OIC") conducted a market conduct examination of Western National covering the time period between July 1, 2003 and June 30, 2004.
3. The market conduct examination of Western National was adopted by the Insurance Commissioner by Order Adopting Report of Market Conduct Examination, Order No. G-05-75, entered September 21, 2005, which Order is final.
4. OIC examiners found 358 contractor classification risk policies that were issued using rates different than those filed with the OIC (see Paragraph 5. below) and 596 Underinsured Motorist (UIM) policies that were issued using rates different than those filed with the OIC.
5. OIC examiners found that the Company used unsupported schedule rate plan debits to increase all premiums for a group of 358 contractor risk policies. The loss costs filed on behalf of the company by the rating organization, ISO, were deemed inadequate by the company. At the direction of the OIC examiners, the Company reviewed all contractor classification risk policies written between 2002 and 2005 and re-rated those that had been debited in this manner. \$61,048 in premium overcharges was returned to policyholders.

· CONSENT ORDER

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6. OIC examiners found 1 policy issued with rates other than those filed with the OIC as a result of using erroneous deductible factors.

7. OIC examiners found 2 commercial policies that did not have Personal Injury Protection (PIP) coverage added but without a written PIP rejection from the insureds.

8. OIC examiners found 3 files that did not contain PIP notification of benefits letters that described circumstances under which benefits could be denied, reduced, or terminated.

9. OIC examiners found 5 commercial policies that were debited without analysis supporting the underwriter's decision. In 10 additional cases, debits were not supported by factual documentation. \$624 was refunded to insureds.

10. OIC examiners found 1 commercial auto policy and 2 personal auto policies issued with coverage or limits different than those requested on the applications. The Company changed the coverage or limits on the applications without the written permission of the applicants.

11. OIC examiners found 3 total loss claims that were improperly settled. In 2 of the files, the vendor's method of establishing the actual value of the total loss wasn't made using comparable local vehicles and the vehicles used for comparison did not have odometer readings documented. In 1 claim, the deduction made from actual cash value for salvage value was not measurable, discernible, or itemized.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

## CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.

2. Western National committed the following violations of Washington law:

- a. By using rates different than those filed with the OIC, including its practice of debiting all contractor classification risks to raise premium rates, the Company violated RCW 48.19.040(6), RCW 48.19.280(1), and WAC 284-24-100(5).
- b. By failing to secure a signed PIP rejection when no PIP coverage was added to a policy, the Company violated RCW 48.22.085(2).
- c. By failing to include notification to PIP policyholders of those circumstances wherein coverage could be denied, reduced or terminated, the Company violated WAC 284-30-395.
- d. By altering applications for insurance without first obtaining written permission to do so from the applicants, the Company violated RCW 48.18.070.

- e. By making actual cash value determinations for total loss auto claims using non-local vehicles without odometer readings documented, the Company violated WAC 284-30-3907(d)(iii).
- f. By deducting salvage value from actual cash value in total loss claim, without the amount of such deduction being measurable, discernible or itemized, the Company violated WAC 284-30-3908(3).

### CONSENT TO ORDER

NOW, THEREFORE, Western National consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of Western National's payment of a fine and such other terms and conditions as are set forth below:

1. Western National consents to the entry of the foregoing Findings of Fact and Conclusions of Law and this Order and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order, Western National agrees to pay to the OIC a fine in the amount of \$150,000, of which \$75,000 is suspended for a period of two years on condition that Western National not materially violate the provisions of the Washington State Insurance Code or Washington Administrative Code relative to its market conduct for a period of two years from the date on which this Order is entered;
3. Failure to pay the fine set forth in paragraph 2 shall constitute grounds for revocation of Western National Assurance's certificate of authority, and for recovery of the fine, including the suspended portion, in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington;
4. Failure to comply with the violated laws and regulations set forth in the Conclusions of Law section of this Consent Order, incorporated by reference herein, shall constitute grounds for recovery of the suspended portion of the fine; and
5. Failure to comply with the Compliance Plan set forth in Exhibit A shall constitute a per se violation of the laws of the State of Washington and may subject Western National Assurance to such further enforcement action as the Commissioner deems necessary under the circumstances; Notwithstanding, a minor, self-reported market conduct violation discovered in the course of an internal audit will not in itself constitute failure to comply with the Compliance Plan nor trigger vacation of the suspended portion of the fine.

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EXECUTED and AGREED this 26<sup>th</sup> day of May, 2006.

WESTERN NATIONAL ASSURANCE  
COMPANY

By: Stuart C. Henderson

Printed Name: STUART C. HENDERSON  
Typed Corporate Title: PRESIDENT + CEO

### ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Pursuant to RCW 48.05.185, the Insurance Commissioner hereby imposes a fine of \$150,000 upon Western National Assurance Company, and suspends \$75,000 under the Conditions set forth in the Consent to Order section of this Consent Order.
2. \$75,000 of the fine must be paid in full within thirty days of the date of entry of this order. Failure to pay this portion of the fine and to comply with the stated Conditions shall constitute grounds for revocation of Western National's certificate of authority and for recovery of the full fine, including the suspended portion, in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
3. Failure to comply with the laws and regulations set forth in the Conclusions of Law Section of this Consent order, incorporated by reference herein, for the next two calendar years from the date of this Order, shall be grounds for recovery of the suspended portion of the fine.

ENTERED AT TUMWATER, WASHINGTON, this 31<sup>st</sup> day of May, 2006.

MIKE KREIDLER,  
Insurance Commissioner

By: Marcia G. Stickler

Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division

**EXHIBIT A – COMPLIANCE PLAN  
WESTERN NATIONAL ASSURANCE COMPANY**

**I. RECITAL**

**A. The Company**

Western National Assurance Company (NAIC # 24465) is an admitted insurer in the State of Washington, domiciled in the State of Minnesota.

The Office of the Insurance Commissioner (hereafter referred to as "OIC") executed a Market Conduct Examination of Company for the period July 1, 2003 and June 30, 2004. A final Order on the Examination was entered on September 21, 2005.

**B. Statement of Intent**

Company hereby voluntarily enters into this Agreement with OIC to promote compliance with the laws and regulations of the State of Washington by its employees, Directors, Officers and contractors.

**C. Scope of Agreement**

This Agreement shall apply to such management or billing contracts or arrangements to the extent of the responsibility undertaken pursuant to each contract or arrangement. This Agreement includes all officers, directors, of Company.

**D. Severability**

The parties to this Agreement stipulate that the Company referenced in Section I of this Agreement shall apply the terms and conditions of this Agreement to each of its Affiliates, whether or not that affiliate is specifically identified. Where a Company Affiliate is exempted from a section of this Agreement, the Agreement shall so state, and reference the Company Affiliate by name.

**II. AGREEMENT OF THE PARTIES**

**A. Purpose of and Consideration for the Agreement**

The parties enter into this Agreement as part of the enforcement action by OIC arising out of the Order on Examination entered against Company by Insurance Commissioner Mike Kreidler on or about September 21, 2005. Western National Assurance agrees to waive a hearing as to the terms of this Agreement and enforcement taken by the OIC in the event this Agreement is materially breached by the Company. Company acknowledges that any breach of this Agreement subjects Company to further action by OIC, at OIC's discretion.

## B. Term of Agreement

The period of the compliance obligations assumed by Company under this Plan shall be the period of time between the effective date of the Order adopting the most recent Market Conduct Examination, and the next Market Conduct Examination's adoption, but in any event, for not less than two calendar years from the Effective Date of this Agreement. The Effective Date of this Agreement shall be predicated upon both parties signing this Agreement, on which date it shall become final and binding.

## C. AGREEMENT TO AMEND PRACTICES

### 1. Internal Audit

a. Internal audits shall be performed by the company's Executive Vice-President or personnel from affiliated company, Western National Mutual Insurance Company. Company shall conduct two audits during the period from January 1, 2007 to January 31, 2008. The first audit shall be completed before June 1, 2007, and the second shall be completed before January 31, 2008. Copies of each internal audit report on audits performed from January 1, 2007 – January 31, 2008 shall be provided to OIC within thirty days of the report being issued.

b. Internal Audit Obligations: Company shall provide the internal auditor with the Market Conduct Examination Findings, Conclusions and Order of OIC and direct its internal audit personnel to include the areas of deficiency and recommendation in its internal audits.

c. Correction of Exceptions: Any exception or deficiency identified by the internal audits conducted pursuant to this Agreement shall be corrected within sixty (60) days of the audit report. Company agrees to advise OIC of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction, and provide OIC with not less than 14 business days to comment on such measures before their implementation by Company.

### 2. Internal Controls

a. Within ninety days of the Effective Date of this Agreement, Company agrees to establish formal procedures related to:

1. Establishing total losses, documenting and identifying taxes and fees to include, and surrendering title to Washington DOL.
2. Communicating PIP Benefits to consumers and providing training regarding the same.
3. Adherence to Company's filed rating plan for Washington business. And

4. Requiring valid signatures on applications for insurance.
- b. The formal procedures must include documentation requirements related to discipline, progressive disciplinary measures for violations and a monitoring mechanism or process.
- c. Company shall conduct two training programs to address the violations set forth in the Consent Order. The first training program shall be completed before June 1, 2007, and the second shall be completed before January 31, 2008.

D. Miscellaneous

1. Preservation of Statutory Authority: Nothing in this Agreement restricts, enlarges or otherwise modifies the jurisdiction of OIC. Neither this Agreement, nor its termination, shall affect the rights and obligations of OIC under applicable statutes or regulations or be deemed an interpretation of such statutes or regulations.
2. Authority to Enter Agreement: Each of the parties hereto gives express assurance that under applicable laws, regulations and where applicable, its Articles and By-Laws, it has the authority to comply fully with the terms and conditions of this Agreement, and that it will provide written notification to the other parties within ten days of any material change to this authority or of any violation of this Agreement.
3. Notification and Submission of Information and Reports Unless otherwise stated in writing subsequent to the Effective Date of this Plan, all notifications or reports required under this Plan shall be submitted to the entities listed below:

OIC: Christine Tribe  
Legal Affairs Division  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia WA 98405-0255

Company: Joseph J. Pingatore, JD, FLMI  
Western National Assurance Company  
5350 West 78<sup>th</sup> Street  
Edina, Minnesota 55439-3101

4. Breach and Default Provisions: Company is expected to fully comply in a timely manner with the obligations of this Agreement. Failure to comply with the timelines or obligations set forth herein may result in recovery of the suspended portion of the fine set forth in the Consent Order.

5. Binding Nature of Agreement: This Agreement is binding on the successors, assigns, affiliates and transferees of Company and each of them, except that the obligations do not apply to business units or lines of business that Company or a Company successor does not own or operate as a result of an asset sale to an unrelated third party.